Case Western Reserve Law Review

Volume 12 | Issue 3

1961

Taxation

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that the plaintiff had requested a transfer to another department and was laid off when it was found that no vacancy existed. Subsequently, the determination was amended and it was ruled that the plaintiff had quit without "just cause," a disqualifying event. On appeal, the Board of Review determined that she had been discharged for "just cause," which also resulted in disqualification. The common pleas court, upon reviewing the record, held that the administrative findings were unreasonable, arbitrary and against the manifest weight of the evidence, but the court of appeals determined that there was abundant evidence in the record to support the finding that the claimant had been discharged for "just cause."

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TAXATION

REAL PROPERTY TAX

On December 4, 1959, the Board of Tax Appeals adopted revised uniform rules for the valuation of real property effective for the tax year 1959, and thereafter.[1] According to the new rules, realty is to be valuated at its "true value in money" rather that at "taxable value" or "assessed value." Because of some confusion that exists regarding the relationship between the fair market value of realty and its assessed value for purposes of real property taxation, it appears appropriate to cite in its entirety Rule 100 of the Revised Board of Tax Appeals Rules which defines "true value in money" as follows:

> RULE 100. DEFINITION. — The true value in money of real property as here used means the value to be determined, in the first instance, by the County Auditor as the assessor of real property in his county on consideration of *all* the facts relating to the physical nature and construction of the property, its availability for the purpose for which it was acquired or constructed, or for the purpose for which it is, or may be, used, and every other applicable factor which may tend to indicate the value of the property such as actual cost, value as indicated by reproduction cost, physical and functional depreciation and obsolescence, if any, market value, and the income capacity of the property, if any. The assessor shall likewise take into consideration the location of the property and the valuations of similar properties in the same locality. (Emphasis added.)

Except for the period from September 9, 1957, to November 4, 1959, when the law required realty to be assessed at "taxable value," realty is required by law to be assessed at its "true value in money."[2]

1. 1 CCH OHIO TAX REP. ¶ 23-850-59 (1960).

2. 127 Ohio Laws 67 (1957), amending OHIO REV. CODE § 5713.01, amended subsequently by 128 Ohio Laws 412 (1959).

The revised rules also require valuation and appraisal of buildings, structures and improvements to land on the basis of reproduction costs at prices prevailing during the month of January, 1956, in the county where the land is situated, less depreciation, obsolescence, and other allowances. The previous rules required such valuation and appraisal on the basis of January, 1950, costs, less the proper allowances.

There were several interesting cases decided by the Supreme Court of Ohio during 1960 which deserve mention here. In *Western Industries, Incorporated v. Board of Revision,*[3] the realty owner was appealing the decision of the Board of Tax Appeals in adopting the valuation ascribed to the property by the County Board of Revision. The taxpayer contended that section 5717.03 of the Ohio Revised Code[4] was unconstitutional because "true value in money" has no known or ascertainable meaning and that the Board of Tax Appeals erred in its holding that its duty was to determine whether the taxpayer carried its burden in showing the Board of Revision's determination to be excessive. The supreme court, in a *per curiam* opinion, stated that "true value in money" is a constitutional term, contained in article XII section 2 of the Ohio constitution, and that the failure of section 5717.03 "to further define the term, does not render the statute so vague or indefinite as to be meaningless."[5] The court further stated that the taxpayer has the burden of proving his right to a reduction in valuation even though no evidence is adduced against its claim.

In another case[6] where the taxpayer appealed the affirmance by the Board of Tax Appeals of the valuation set by the Board of Revision, the taxpayer urged that the decision of the Board of Tax Appeals was unreasonable and unlawful; it was argued that the Board's adoption of the Board of Revision's valuation figures, without allowing the taxpayer any opportunity to submit testimony relative to the valuations, was an unconstitutional denial of due process of law. In reversing and remanding the Board of Tax Appeals' decision, the supreme court said that since the Board had had two appraisal figures as to building value presented in evidence before it, the Board could have accepted and adopted any valuation figure, supported by evidence which in its discretion it considered to be true value. However, by adopting the valuation made by the Board of Revision, it erred in not admitting examination and cross-examination by the taxpayer relative to the determination by the Board of Revision relied upon by it.

3. 170 Ohio St. 340, 164 N.E.2d 741 (1960).

4. Section 5717.03 provides that, "In the case of an appeal from a decision of a county board of revision the board of tax appeals shall determine the true value in money of the property whose valuation or assessment by the county board of revision is complained of. . . ."

5. 170 Ohio St. 340, 341, 164 N.E.2d 741, 742 (1960).

6. Shaker Square Co. v. Board of Revision, 170 Ohio St. 369, 165 N.E.2d 431 (1960).

An unusual issue was presented in *New York Central Railroad v. Board of Revision.*[7] This case involved the valuation of real property situated in the City of Cleveland along the shore of Lake Erie. The taxpayer, appealing the decision of the Board of Tax Appeals, contended that the subject property was composed entirely of land fill which, at most, was an improvement made in the exercise of a littoral right and that such littoral right and improvements made in the exercise thereof were not separately taxable as real property. The Board of Tax Appeals found from the record that the subject property, formerly submerged land, was liable to real property taxation until such property was exempted by the Board of Tax Appeals or a court of competent jurisdiction. The supreme court, affirmed the Board's decision, finding that it was not unreasonable or unlawful.

PERSONAL PROPERTY

Because of possible federal income tax benefits and other advantages, it has become fairly common for manufacturers, instead of purchasing, to lease machinery and equipment used in their operations. This situation presents the question whether leased machinery and equipment which is used by the lessee for manufacturing, but which is owned by a lessor who is not a manufacturer, should be listed for personal property taxation at fifty per cent or at seventy per cent? This question was well considered and answered in a recent Board of Tax Appeals decision.[8] In that case the taxpayer contended that the *use* of the machinery and equipment provides the sole test under sections 5711.16, 5711.22, and related sections of the Ohio Revised Code, and that if the property is used in manufacturing by a lessee, it is entitled to the fifty per cent classification regardless of the fact that it is owned by someone other than the manufacturer. The Tax Commissioner argued that if such property is not owned by the manufacturer it must be listed at seventy per cent of book value. The Board of Tax Appeals agreed with the taxpayer and determined "that the *use* of machinery and equipment in manufacturing should be, and is, the only test for its listing and assessment for taxation and that the status of the owner or of the person in whose name the machinery is listed for taxation is immaterial." The Board stated that though the legislature has the power to classify property for the purposes of taxation it does not have power to classify taxpayers, and that, obviously, the Tax Commissioner has no such power. Therefore, any rule promulgated by the Tax Commissioner which classifies taxpayers is invalid.

7. 171 Ohio St. 320, 170 N.E.2d 738 (1960).

8. First Nat'l Bank v. Bowers, 2 CCH OHIO TAX REP. (Pt. 2) ¶ 201-018 (1960).

An unusual result is found in *Southland Stores Number 3, Incorporated v. Bowers,*[9] where the court considered at what time a taxpayer becomes engaged in business for purposes of personal property taxation within the meaning of former section 5711.03 of the Ohio Revised Code.[10] The taxpayer was engaged in the business of leasing department store equipment and had begun acquiring such equipment during September, 1956. On April 13, 1956, taxpayer had agreed to lease equipment to a retail department store, the fixtures to be delivered and the rental payments to begin on February 4, 1957. On January 1, 1957, taxpayer maintained an inventory for leasing of $246,309.01. None of the equipment had been installed and the building in which it was to be used was in the process of construction. Pursuant to the lease, the taxpayer delivered possession of store equipment in the amount of $758,947 on February 4, 1957. The Tax Commissioner, affirmed by the Board of Tax Appeals, determined that the taxpayer had not become "engaged in business" until February 4, 1957, and that all its activity prior thereto was only preparatory to engaging in business; accordingly, the Tax Commissioner increased the personal property tax assessment for 1957. The taxpayer contended that it was engaged in business as of tax listing day, January 1, 1957. The supreme court affirmed the Board and found, using the magic words, that the decision of the Board was "not unreasonable or unlawful."

An amendment to section 5711.22 of the Revised Code[11] enlarged the provision requiring that investments that have not yielded any income during the calendar year be listed and assessed as unproductive investments at their true monetary value on tax listing day; the provision now includes investments that have not been outstanding for the full calendar year immediately proceeding tax listing day. In a letter dated February 16, 1960, the Ohio Tax Commissioner ruled that this amendment required taxation of investments which had not been outstanding for the full calendar year, regardless of the listing method employed by the taxpayer or whether the investment produced income. Accordingly, if the taxpayer uses the federal election method of reporting his income-yielding investments, he must exclude amounts received on these investments and must list them separately as unproductive investments.

SALES AND USE TAX

Several notable cases were decided by the Board of Tax Appeals concerning the definition of "price" for sales tax purposes. The issue in

9. 171 Ohio St. 271, 169 N.E.2d 549 (1960).

10. Former OHIO REV. CODE § 5711.03, was amended by 127 Ohio Laws 650 (1957), the present statute.

11. 128 Ohio Laws 244 (1959).

Guzzo v. Bowers,[12] was whether, in determining the sales price of personal property, a reduction in the consideration for such sale can be made by agreement of the parties after the sale is consummated. The Board found that monthly rental sales of equipment were consummated when the invoice for the sale was issued for the amount of the sale and the sales tax charged thereon. After the invoice was paid, the parties agreed to reduce the sales price. The Board, in interpreting section 5739.01 of the Revised Code which defines "price," held that, under the facts presented, no such reduction could be made for sales tax purposes. The Board affirmed the Tax Commissioner's determination of a sales tax deficiency based on the original amount of the retail rental sales. In another case[13] involving rental sales, the Board held that a lessor of business machines could not deduct maintenance labor costs from the sales tax base incurred, although maintenance was required by the terms of the lease, and the maintenance labor charge was itemized separately from the rental fee on the invoices. The Board conceded that a transaction that involves a charge for labor only is not a "sale," but concluded that the taxpayer-lessor's expenses, incurred in keeping its own equipment in usable condition, were its own obligation and were not deductible in computing rental price under section 5739.01(H) of the Revised Code.

In *Travnikar v. Bowers,*[14] "price" was defined for the discount retail seller of appliances and furniture who computed his sales tax liability as follows: added three per cent for sales tax to the suggested list price of the item; subtracted the discount given to the buyer; from the remainder, subtracted the amount of sales tax based on the list price; and multiplied this remainder by three per cent to determine his sales tax liability. The Tax Commissioner contended that the sales tax due was the amount computed on the suggested list price. However, the Board disagreed with both the Commissioner and the taxpayer. Finding that since the taxpayer actually received, as consideration for the sale, the suggested list price plus three per cent thereof minus the discount, the Board held that the sales tax should be computed on this sum.

EXEMPTIONS

Property

A controlling test determining the tax exempt status of property owned by a charitable institution was set forth by the Ohio Supreme Court in *National Headquarters Disabled American Veterans v. Bowers.*[15]

12. Ohio B.T.A. No. 42513 (Aug. 4, 1960), 3 CCH OHIO TAX REP. ¶ 200-049 (1960).
13. International Business Machs. v. Bowers, Ohio B.T.A. No. 42580 (June 10, 1960), 3 CCH OHIO TAX REP. ¶ 200-010 (1960).
14. Ohio B.T.A. No. 43065 (Oct. 20, 1960), 3 CCH OHIO TAX REP. ¶ 200-071 (1960).
15. 171 Ohio St. 312, 170 N.E.2d 731 (1960).

The taxpayer, a charitable institution, used certain personal and real property in the assembling, distribution, and mailing of small plastic replicas of motor-vehicle license plates known as "Idento-Tags." These tags, together with literature describing the purpose of the organization and requesting contributions from the recipients, were mailed to owners of motor vehicles all over the United States. Taxpayer contended that such property should be exempted under section 5709.12 of the Revised Code providing for the exemption of "real and tangible personal property belonging to institutions that is used exclusively for charitable purposes," and under section 5709.17 relating to property held by a war veterans organization. The supreme court referred to article XII section 2 of the Ohio constitution which provides that general laws may be passed to exempt from taxation "institutions used exclusively for charitable purposes." The court affirmed the decision of the Board of Tax Appeals and held that the property in question was not being used exclusively for charitable purposes, even though the income from the "Idento-Tags" was ultimately used exclusively for charitable purposes; therefore, the subject property was not tax exempt.

A similar issue, presented in two Board of Tax Appeals cases decided in August of 1960, was apparently resolved differently in each case. In the first case,[16] a township acquired land adjacent to its fire station in January, 1959, for the express purpose of enlarging the station. Construction of the addition did not commence until after the tax lien date for the year 1960. The Board, citing two supreme court cases,[17] held that where a public authority acquires and holds property for a public use, such property is entitled to exemption, notwithstanding the fact that the property is not so used on or prior to the tax lien date in the year for which application for tax exemption is filed. In the second case[18] decided by the Board, the facts were strikingly similar but the result as strikingly dissimilar. Here an Ohio charitable corporation purchased land in June, 1956, for the express purpose of constructing a church. Construction did not begin until September of 1959, and the property until that time had been used for no purpose whatsoever. The Board denied the tax exemptions requested for the above mentioned period, finding a distinction between property owned by a public authority and that which is privately owned. The Board further held that section 5709.07 of the Revised Code only allows exemption to a religious organization for a *house* used exclusively for public worship, the books and furniture

16. Board of Township Trustees of Clearcreek, Ohio B.T.A. No. 43411 (Aug. 4, 1960), 3 CCH OHIO TAX REP. ¶ 200-065 (1960).

17. Carney v. School Dist. Pub. Library, 169 Ohio St. 65, 157 N.E.2d 311 (1959); City of Cleveland v. Carney, 169 Ohio St. 259, 158 N.E.2d 895 (1959).

18. Holy Trinity Protestant Episcopal Church, Ohio B.T.A. No. 42968 (Aug. 8, 1960), 3 CCH OHIO TAX REP. ¶ 200-055 (1960).

therein, and the ground attached to the building necessary to its use. It then concluded that there was no "house" or building on the premises for the tax years in question, and that no exemption could be granted. It is noted, however, that in its opinion the Board restated "the long-recognized view" that exemption from taxation applies only to such public property as is actually used for public purposes at the time exemption of such property is sought.

In *Joslyn Manufacturing and Supply Company v. Bowers*[19] the supreme court explained the exemption from personal property tax granted to merchandise held "for storage only" under section 5701.08 of the Revised Code. The taxpayer was an Illinois corporation having a place of business in Cincinnati, Ohio. Merchandise was shipped to the office in Cincinnati, and some items, without being processed, manufactured, or treated in any way in Ohio, were shipped to points outside of Ohio upon order by customers of the taxpayer. The court considered its previous decisions which interpreted the phrase "for storage only" as used in section 5701.08 and found them not controlling; in previous cases the property sought to be exempted was held by the taxpayer for use in the production of its ultimate product. In the instant case, the court found that the property was never treated in any way by the taxpayer. Reversing the Board of Tax Appeals, the court held that the personal property of the taxpayer was held in inventory subject to resale and therefore returnable as personal property "used in business." The court further commented that it was taking a realistic view because words and phrases used in tax statutes should be construed as they are traditionally understood; and the traditional concept of the words "for storage only" does not encompass the operation of the taxpayer. Goods offered for sale by a taxpayer are not held for storage only "while they are, figuratively speaking, on his shelves awaiting distribution to his customers."[20]

Sales Tax

The weight accorded by the Ohio Supreme Court to a decision by the Board of Tax Appeals, regarding claimed sales tax exemptions for tangible personal property used by a taxpayer directly in manufacturing, processing, etc.,[21] was demonstrated in *Hercules Galion Products, Incorporated v. Bowers*.[22] The court, in affirming the Board's decision in all respects, said that it has, in a long line of cases, prescribed certain rules for determining the issue, and some measure of finality must be accorded to the Board's application of these rules to various factual situations. The

19. 170 Ohio St. 575, 167 N.E.2d 349 (1960).
20. *Id.* at 579, 167 N.E.2d at 352.
21. OHIO REV. CODE § 5739.01.
22. 171 Ohio St. 176, 168 N.E.2d 404 (1960).